

Notice of Proposed Rulemaking by Cross-Reference to Temporary Regulations

Excise Taxes on Excess Benefit Transactions

REG-246256-96

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In T.D. 8920 on page 654 of this Bulletin, the IRS is issuing temporary regulations relating to the excise taxes on excess benefit transactions under section 4958 of the Internal Revenue Code (Code), as well as certain amendments and additions to existing Income Tax Regulations affected by section 4958. Section 4958 was enacted in section 1311 of the Taxpayer Bill of Rights 2. Section 4958 generally is effective for transactions occurring on or after September 14, 1995.

Section 4958 imposes excise taxes on transactions that provide excess economic benefits to disqualified persons of public charities and social welfare organizations (referred to as applicable tax-exempt organizations). Disqualified persons who benefit from an excess benefit transaction with an applicable tax-exempt organization are liable for a tax of 25 percent of the excess benefit. Such persons are also liable for a tax of 200 percent of the excess benefit if the excess benefit is not corrected by a certain date. Additionally, organization managers who participate in an excess benefit transaction knowingly, willfully, and without reasonable cause, are liable for a tax of 10 percent of the excess benefit. The tax for which participating organization managers are liable cannot exceed \$10,000 for any one excess benefit transaction.

DATES: Written comments and requests for a public hearing must be received by April 10, 2001. In addition to any comments addressing substantive issues of the proposed regulations, the IRS and Treasury specifically request comments on the clarity of the proposed rule and how it may be made easier to understand.

ADDRESSES: Send submissions to: CC:M&SP:RU (REG-246256-96), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday

between the hours of 8 a.m. and 5 p.m. to: CC:M&SP:RU (REG-246256-96), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.gov/prod/tax_regs/comments.html. A public hearing will be scheduled if requested.

FOR FURTHER INFORMATION CONTACT: Concerning submissions, Guy Traynor, (202) 622-7180; concerning the regulations, Phyllis D. Haney, (202) 622-4290 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these proposed regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1623, in conjunction with the notice of proposed rulemaking published August 4, 1998, 63 F.R. 41486, REG-246256-96, Failure by Certain Charitable Organizations to Meet Certain Qualification Requirements; Taxes on Excess Benefit Transactions.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books and records relating to the collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required.

An initial regulatory flexibility analysis was prepared as required for the collection of information under 5 U.S.C. 603 in the notice of proposed rulemaking, REG-246256-96,

Failure by Certain Charitable Organizations to Meet Certain Qualification Requirements; Taxes on Excess Benefit Transactions, published August 4, 1998, at 63 F.R. 41486. The initial analysis was submitted to the Chief Counsel for Advocacy of the Small Business Administration pursuant to section 7805(f) of the Code for comment on its impact on business. The initial analysis continues to apply to this proposed rule. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury specifically request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing may be scheduled if requested in writing by a person who timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Phyllis D. Haney, Office of Division Counsel/Associate Chief Counsel (Tax-Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in their development.

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26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements. Accordingly, 26 CFR Parts 53 and 301 are proposed to be amended as follows:

PART 53—FOUNDATION AND SIMILAR EXCISE TAXES

Paragraph 1. The authority citation for part 53 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 2. Sections 53.4958–0 through 53.4958–8 are added to read as follows:

[The text of proposed §§53.4958–0 through 53.4958–8 is the same as the text of §53.4958–0T through 53.4958–8T published in T.D. 8920.]

Robert E. Wenzel,
*Deputy Commissioner
of Internal Revenue.*

(Filed by the Office of the Federal Register on January 9, 2001, 8:45 a.m., and published in the issue of the Federal Register for January 10, 2001, 66 F.R. 2173)